vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.99 OF 2002

Kisan Rama Waghmare @ Katkari
Convict Prisoner No.C-12282
Yerawada Central Prison
Pune ... Appellant

V/s.

The State of Maharashtra
(at the instance of Kalamboli
Police Station) ... Respondent

None for Appellant
Mrs.P.H. Kantharia, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 31, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal has been preferred by the appellant challenging his conviction under section 302 and sentence pursuant to the judgment and order passed by the I Adhoc Additional Sessions Judge, Raigad-Alibag.

2. The case of the prosecution is that the appellant set fire to his wife, the deceased on 16.8.1999 at about 7.30 pm. The accused after having set fire to the deceased dragged her to a pond near his house and extinguished the fire. However, the deceased having suffered burn injuries to the extent of 69% succumbed after her statement was recorded implicating the deceased. She also allegedly told her sister that it was the accused who had set her on fire. Similarly,

the Doctor who examined her in the hospital and was treating her was also told by her that the accused had set her on fire since she was not able to provide the vegetable that he wanted to eat for dinner.

3. The prosecution has examined 7 witnesses. The prosecution claims that PW2 witnessed the incident. This witness has deposed that at 7 pm, he saw a fire in the house of the accused. He saw the accused dragging the victim who had sustained the burn injuries out of the house. He has further deposed that the accused dragged her upto a pond and tried to extinguish the fire by pouring water on her. This witness then raised an alarm and informed his brother in law of the incident. The accused ran away from the spot according to PW2. In the crossexamination, however, he has admitted that because he saw the accused trying to extinguish the fire that he inferred that he had set the victim on fire.

4. The sister of the deceased has also been examined as PW3. This witness has stated that she heard PW2 shout out that something had gone wrong with the sister. She therefore, rushed to the pond where the victim was lying. She took her out of the pond. The victim told her that the accused had tied her hands and poured kerosene on her and set her on fire. This witness then removed the deceased to the hospital where the deceased succumbed to her burn injuries five days

later. She has admitted that the fire had been extinguished by the time she reached her sister and there were no burn injuries on her mouth.

The Doctor who treated the victim has been examined. He has stated that she told him the history about the burn injuries sustained by her. She had informed him that it was the accused who had set her on fire since she was not able to provide him with the vegetables of his choice for dinner. This witness, PW4 has also stated that the deceased was in a mentally sound condition to have her statement recorded when PW7, the Special Executive Officer, visited the hospital.

5. PW5 is the Investigating Officer who drew the Spot Panchanama and the Arrest Panchanama. The dying declaration of the deceased has been recorded by PW7. He has stated that the deceased was mentally fit to have her statement recorded and, therefore, proceeded to do so.

6. We have perused the dying declaration. This statement of the deceased does indicate that she was dragged to the pond by the appellant who then ran away. The statement was recorded on 16.8.1999 at about 11.15pm. However, there are material discrepancies in the dying declaration and the evidence of PW2, the eye witness. PW3 speaks about having seen the appellant

dragging the deceased to the pond and trying to extinguish the fire by pouring water on her. PW3 has deposed that she lifted the deceased out of the pond which is not the same as the statements of PW2 or the deceased. PW2 speaks about the deceased being gagged but does not mention anything about her hands being tied. The deceased in her statement mentions that her hands were tied by the appellant. Significantly, PW3 who lifts her out of the pond does not find her hands tied. None of the witnesses therefore, corroborate each other's testimonies. Nor does the dying declaration inspire confidence. In such circumstances, in our view, it would be difficult to accept that it was the accused who had set the deceased on fire. PW2 has not witnessed the appellant setting the deceased on fire. He inferred that he had done so only because he saw the accused trying to extinguish the flames by dragging the deceased to the pond nearby. In such circumstances, we find it difficult to uphold the conviction of the accused and sentence imposed on him.

7. Appeal allowed. The appellant be released forthwith, if not otherwise required in law.